



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment

January 26, 2016

7:30 pm @ Community Development Department

Draft Minutes

Mike Scholz	Chairman	Present	Mike Mazalewski	Alternate	Present
Heath Partington	Vice Chair	Present	Kevin Hughes	Alternate	Present
Mike Samsel	Secretary	Present	Jim Tierney	Alternate	Present
Pam Skinner	Member	Present	Jay Yennaco	Alternate	Excused
Bruce Breton	Member	Excused			

Staff:

Dick Gregory, ZBA Code Enforcement Administrator

Laura Scott, Director of Community Development

Suzanne Whiteford, Minute Taker

Meeting called to order at 7:30 by Chairman Scholz

Mr. Mazalewski seated for Mr. Breton

Mr. Samsel read Case #39-2015 into the record

Lots 17-G-6 & 17-G-20 Case #39-2015 (a request to withdraw this case has been received)

Applicant – Ryan Development

Owner – 106 Indian Rock Road LLC & Diana Wolters c/o Attorney Andrew Sullivan

Location – 102 Indian Rock Road & 82 Range Road

Zone- Gateway Commercial District & Cobbets Pond and Canobie Lake Watershed Protection District (CPCLWP)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations to allow more impervious surfaces than allowed.

Section 616.6.4.2 to allow the combined lots to be covered with impervious surfaces of 55.2 % where 30% is allowed.

Mr. Samsel read case #40-2015 into the record

Lots 17-G-6 & 17-G-20 Case #40-2015 (a request to withdraw this case has been received)

Applicant – Ryan Development

Owner – 106 Indian Rock Road LLC & Diana Wolters c/o Attorney Andrew Sullivan

Location – 102 Indian Rock Road & 82 Range Road

Zone- Gateway Commercial District & Cobbets Pond and Canobie Lake Watershed Protection District (CPCLWP)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations to allow the occupiable space to be taller than allowed

Section 701.1 to allow the occupiable space of the proposed hotel to be 45 ft. where 35 ft. is allowed.

Mr. Samsel read the following letters into the record:

Letter from Andrew H. Sullivan to David Sullivan, Town Administrator, dated January 13, 2016

Letter from Kevin S. Eriksen, Esq. to Town of Windham ZBA, dated January 13, 2016

Letter from Kevin S. Eriksen, Esq. to Town of Windham ZBA, dated January 13, 2016

Mr. Samsel recalled a similar situation in the past regarding a cell tower request; in this situation the ZBA can act in a similar fashion or accept the withdraw.

Mr. Partington disagrees with Attorney Campbell; his simplifying down ignores quasi judicial, and looses due process for the abutters. The ZBA can't reverse what has occurred. Mr. Partington is prepared to rule on case#39-2015.

Ms. Skinner agrees with Mr. Partington.

Mr. Samsel believes the ZBA is here on behalf of the applicant, not the abutters. There is no applicant, the owner has no representation. Mr. Samsel strongly recommends to dispose of this without prejudice or make no action.

Chairman Scholz believes the owner ultimately still has an application in front of the board.

Mr. Mazalewski believes the ZBA should withdraw the cases as requested.

Mr. Partington commented that everyone has been notified there has been a decision that is why no one is here for the meeting.

Mr. Samsel believes that any determination of withdraw should be before the board and not before the public.

Chairman Scholz commented that the ZBA can make a determination on what has been presented or consider the withdraw request. Chairman Scholz agrees with Mr. Partington; the ZBA does not have the information requested which was have an expert review.

A motion was by made by Mr. Samsel to accept the withdraw as requested for Case# 39-2015

Second by Mr. Mazalewski

Vote 4-1-0 Mr. Partington opposed

Motion carries

A motion was made by Mr. Samsel to accept the withdraw as requested for Case #40-2015

Second by Mr. Mazalewski

Vote 4-1-0 r. Partington opposed

Motion carries

Laura Scott, Director of Community Development

- Ms. Scott reached out to Mr. Keach and the Planning Board because they were holding citizens petition related to these cases.
- Mr. Gregory worked with the Chair on the wording.
- Ms. Scott asked Attorney Campbell to weigh in on the advice she is giving staff and the board.
- The Chairman and the Vice Chair were aware Ms. Scott was reaching out to Attorney Campbell.
- There was a time lapse between the request for review and the date Mr. Keach could do the review due to his scheduled absence of 3 weeks during the holidays.
- Mr Gregory was aware Mr. Keach was out of town for 3 weeks during the holidays.
- There was no time to have the review completed for tonight's meeting.
- Mr. Keach was told on the 12th of January to have the review done in time for tonight's meeting.
- Ms. Scott notified Mr. Keach not to begin the review due to the withdraw. The money for the review was coming from the applicant, due to the withdraw there would not be funds available to pay for Mr. Keach's review.
- Ms. Scott reached out to Attorney Campbell to verify if it was appropriate for her to cancel the review.
- Ms. Scott does not know when Mr. Gregory notified the Chairman of the withdraw.

Chairman Scholz verified the process needs to be the Chairman is notified when the town receives a withdraw request.

Ms. Scott reviewed that Mr. Keach can do a review with notice in a few days. The applicant was given 30 days to submit the material and Mr. Keach was out of town for several weeks. That is why the timeline turned out as it did.

Chairman Scholz advised staff that when the board makes a determination it is up to the board to make a determination about the change.

Mr. Samsel commented that Ms. Scott made a request on behalf of the ZBA; unless the ZBA requests something from attorney Campbell is to be decided by the ZBA. Questions to the attorney come from the board. Questions should not come on behalf of the board from the staff.

Mr. Hughes seated for Case #4-2013

Mr. Samsel read a letter from Diane M. Gorrow from Soule, Leslie, Kidder, Sayward & Loughman dated January 15, 2016 into the record.

Variance renewal request for Case # 4-2013, lot 21-G-600

Mr. Gregory, this is not a public hearing, it is a public meeting. There is no notice. This is the same as a rehearing request.

Mr. Partington asked how he is expected to take good cause into consideration without public input. Mr. Partington asked why isn't this a public hearing, how do you (Mr. Gregory) know this a public meeting and not a public hearing, what is the basis for this not being a public hearing.

Mr. Samsel commented that this type of request has not come before this board in this fashion.

Mr. Tierney commented per the ZBA bylaws RSA 674.33 gives authority to the ZBA to make this decision. It is a meeting, and the board can decide how to continue; there is no official process. Mr. Gregory can extend for one year. Per Ordinance Section 906 was read the code enforcement officer can grant a one year extension.

Attorney Clark

- Represents the Carpenters.
- Defendants in the case.
- The statue could be read both ways.
- My opinion, the statue is put there so the ZBA can make a determination if not covered under the ordinance.
- Object and oppose granting further extension.
- The applicant is free to reapply.
- The request should be denied based on the above stated basis.

Mr. Samsel asked Attorney Clark to verify that the reason the owner is asking for an extension does not have good cause.

Mr. Clark commented the legislative body has amended your ordinance to handle these extensions. From my perspective this is where it ends, no further extension can be granted. After a 2 year extension is granted, the code enforcement officer can grant an additional year. Beyond that additional extension cannot be granted by the ZBA based on the ordinance.

Chairman Scholz agrees with Attorney Clark based on RSA 674.33 I-a.

Mr. Samsel believes this is headed to civil court. There seems to be an unfortunate circumstance in front of us and we can make the determination of what can be done.

Chairman Scholz believes the RSA prescribes the two year timeline and allows the legislative body in the town to extend an additional year. Regardless of extenuating circumstances the ZBA cannot extend it any further.

Mr. Partington believes good cause is separate from whether or not the ZBA can grant the extension. There is no duration clearly stated in the RSA. The duration is clear in the ordinance. Mr. Partington believes there is a judgement call to be made and it is based on what is considered good cause.

Mr. Samsel believes it is up to the ZBA to decide what is a good cause.

Chairman Scholz believes in this particular case the ordinance is very clear. There is already prescription there. It is covered in 906 of the ordinance.

Mr. Hughes commented that the applicant has already gotten a one year extension.

Skinner agrees with Chairman Scholz.

Motion by Partington to deny variance renewal request for Case #4-2013, lot as variances can already be extended by the ordinance section 906. And in this case they have already been granted a one year extension under ordinance section 906.

Mt. Tierney used to have request for longer because it was only one year, the RSA was changed to two years and the board had already proactively changed the extension to two years.

Mr. Samsel suggests relief has been granted once for a total of three years.

Second by Mr. Samsel

Vote 5-0-0

Motion carries

Motion by Mr. Samsel to adjourn

Second by Ms. Skinner

Vote 5-0-0

Adjourned 9:34pm

Minutes submitted by Suzanne Whiteford

4. Review and approval of draft minutes of 10-10-2015, 12-22-2015 & 1-12-2015

5. Adjournment

Copies of all Zoning Board of Adjustment applications and materials are available for review at the Community Development Department; open Monday – Friday, 8 AM – 4 PM.